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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,945	08/04/2003	Michael S. Tyndall	KOM 4295	5207
321	7590	06/06/2005	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			TONGUE, LAKIA J	
			ART UNIT	PAPER NUMBER
			1645	

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,945

Applicant(s)

TYNDALL ET AL.

Examiner

Lakia J. Tongue

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-51 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

RD

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-35, drawn to a topical veterinary composition, classified in class 435, subclass 176.
- II. Claims 36-51, drawn to a method of treating/preventing animal infection, classified in class 424, subclass 184.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case invention I can be used to impair the growth of nosocomial infection of humans.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species of the claimed invention:

In the event applicant elects Group I, claims 1-35 applicant is required to elect **two components, one antimicrobial and one skin conditioner (a single species).**

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Claims 1-35 are generic to a plurality of disclosed patentably distinct species, which are structurally different, comprising:

Antimicrobial

- 1) Iodine
- 2) Quaternary ammonium compounds
- 3) Chlorine release compounds
- 4) Peroxides
- 5) Protonated carboxylic acids
- 6) Alkylaryl sulfonic acids
- 7) Chlorine dioxide
- 8) Chlorhexidine

Skin Conditioner

- 1) Alkyl
- 2) Alkylamides
- 3) Organosilicone modified alkyl
- 4) Alkylamides which contain between 8 and 25 carbon atoms or mixtures thereof
- 5) Linoleamidopropyl phosphatidylglycerol dimonium chloride phosphate,
- 6) Cocoamidopropyl phosphatidylglycerol dimonium chloride phosphate
- 7) Sunfloweramidopropyl phosphatidylglycerol dimonium chloride phosphate
- 8) Sodium olivamidopropyl phosphatidylglycerol dimonium chloride phosphate

Art Unit: 1645

- 9) Stearamidopropyl phosphatidylglycerol dimonium chloride phosphate
- 10) Ricinoleamidopropyl phosphatidylglycerol dimonium chloride phosphate
- 11) Di-linoleamidopropyl phosphatidylglycerol dimonium chloride phosphate
- 12) Poly (ethylene glycol)_{n=8} dimethicone sunfloweramidopropyl
- 13) Phosphatidylglycerol dimonium chloride phosphate complex
- 14) Dimethicone saffloweramidopropyl phosphatidylglycerol dimonium chloride phosphate complex
- 15) Sodium grapeseedamidopropyl phosphatidylglycerol dimonium chloride phosphate
- 16) Sodium borageamidopropyl phosphatidylglycerol dimonium chloride phosphate.

In a situation where **Three Components** are needed pick one component from each group above in addition to one of the following:

- 1) Phosphate ester surfactant
- 2) Synthetic surfactant

In the event applicant elects Group II, claims 36-51 applicant is required to elect **two components, one antimicrobial and one skin conditioner (a single species)**. Claims 1-35 are generic to a plurality of disclosed patentably distinct species, which are structurally different, comprising:

Antimicrobial

- 1) Iodine
- 2) Quaternary ammonium compounds
- 3) Chlorine release compounds
- 4) Peroxides
- 5) Protonated carboxylic acids
- 6) Alkylaryl sulfonic acids
- 7) Chlorine dioxide
- 8) Chlorhexidine

Skin Conditioner

- 1) Alkyl
- 2) Alkylamides
- 3) Organosilicone modified alkyl
- 4) Alkylamides which contain between 8 and 25 carbon atoms or mixtures thereof
- 5) Linoleamidopropyl phosphatidylglycerol dimonium chloride phosphate,
- 6) Cocoamidopropyl phosphatidylglycerol dimonium chloride phosphate
- 7) Sunfloweramidopropyl phosphatidylglycerol dimonium chloride phosphate
- 8) Sodium olivamidopropyl phosphatidylglycerol dimonium chloride phosphate
- 9) Stearamidopropyl phosphatidylglycerol dimonium chloride phosphate
- 10) Ricinoleamidopropyl phosphatidylglycerol dimonium chloride phosphate

Art Unit: 1645

- 11) Di-linoleamidopropyl phosphatidylglycerol dimonium chloride phosphate
- 12) Poly (ethylene glycol)_{n=8} dimethicone sunfloweramidopropyl
- 13) Phosphatidylglycerol dimonium chloride phosphate complex
- 14) Dimethicone saffloweramidopropyl phosphatidylglycerol dimonium chloride phosphate complex
- 15) Sodium grapeseedamidopropyl phosphatidylglycerol dimonium chloride phosphate
- 16) Sodium borageamidopropyl phosphatidylglycerol dimonium chloride phosphate.

In a situation where **three components** are needed pick one component from each group above in addition to one of the following:

- 1) Phosphate ester surfactant
- 2) Synthetic surfactant

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim

is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143). Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04. **Process claims that depend from or otherwise include all the limitations of the patentable product** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103, and 112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer* and 35 U.S.C. § 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product


claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakia J. Tongue whose telephone number is 571-272-2921. The examiner can normally be reached on Monday-Friday 7-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on 571-272-0864. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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SUPERVISORY PATENT EXAMINER
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